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12 **UNITED STATES DISTRICT COURT**
13
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 CITY OF LOS ANGELES,

16
17 Plaintiff,

18
19 v.

20 WILLIAM P. BARR, Attorney
21 General of the United States, *et al.*,

22 Defendants.
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28

Case No. 2:18-cv-07347-R-JC

**NOTICE OF MOTION AND JOINT
MOTION FOR INDICATIVE
RULING UNDER FEDERAL RULE
OF CIVIL PROCEDURE 62.1;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: May 6, 2019

Time: 10:00 a.m.

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**NOTICE OF MOTION AND MOTION FOR PARTIAL STAY
OF INJUNCTION PENDING APPEAL**

PLEASE TAKE NOTICE that on Monday, May 6, 2019, at 10:00 a.m., or as soon thereafter as counsel may be heard, before The Honorable Manuel L. Real, in Courtroom 880 on the Eighth Floor of the Edward R. Roybal Federal Building and United States Courthouse, 255 East Temple Street, Los Angeles, the plaintiff and the defendants will jointly move under Rule 62.1 of the Federal Rules of Civil Procedure, and hereby do move, for an indicative ruling stating that, if the Court of Appeals remands that portion of the Court's injunction of February 15, 2019, that relates to the Gang Suppression Planning Grants Program for Fiscal Year 2018, this Court would grant a forthcoming motion to vacate that aspect of the injunction to permit further substantive motion practice herein regarding the Gang Suppression program.

This joint motion is based on the following Memorandum of Points and Authorities, the evidence and records on file in this action, and any other written or oral evidence or argument that may be presented at or before the time this motion is heard by the Court.

Dated: April 5, 2019

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This Court has entered a nationwide permanent injunction against certain grant requirements in the Gang Suppression Planning Grants Program (“Gang Suppression program”) and the Edward Byrne Memorial Justice Assistance Grant Program (“Byrne JAG Program”) for Fiscal Year 2018. The defendants have appealed that injunction, such that jurisdiction over this action currently lies in the Court of Appeals. The defendants have moved for a partial stay of that injunction pending appeal – staying the nationwide scope of the Byrne JAG injunction, and staying the injunction with respect to the Gang Suppression requirements in its entirety. Los Angeles has consented to that motion for stay, and defendants respectfully request that the Court enter the requested stay as soon as possible.¹

Separate but related to this request for a partial stay, the parties hereby submit that the injunction should be vacated solely as to the Gang Suppression requirements,² without prejudice to reinstatement after further substantive motion practice in this Court. Plaintiffs have not previously moved for judgment regarding their challenges to those requirements.

Therefore, the parties respectfully ask the Court to enter an “indicative ruling” under Rule 62.1 of the Federal Rules of Civil Procedure stating that, given jurisdiction, it would grant a motion to vacate that portion of its injunction that concerns the Gang Suppression requirements to permit further proceedings herein regarding those requirements. If this Court were to enter such an indicative ruling, the parties would thereupon seek a limited remand from the Court of Appeals to confer jurisdiction on this Court to vacate that portion of its injunction. The parties could then engage in further motion practice in this Court regarding the Gang

¹ This Court retains jurisdiction to stay its injunctive rulings. *See* Fed. R. Civ. P. 62(c).

² The parties are not requesting any relief herein that would affect the aspect of the Court’s injunction that concerns the Byrne JAG Program.

1 Suppression requirements. The remainder of this case – regarding the Byrne JAG
2 requirements – would proceed on appeal.

3 If the Court vacates without prejudice the portion of its injunction concerning
4 the Gang Suppression requirements, the City intends to promptly move for partial
5 summary judgment and a permanent injunction on those claims, and expects that
6 this remaining aspect of the case can be resolved expeditiously.

7 **ARGUMENT**

8 **I. Further Motion Practice Regarding the Gang Suppression** 9 **Requirements Is Needed.**

10 The parties in this action filed cross-motions for partial summary judgment (or
11 dismissal), but those motions were not co-extensive. The defendants sought
12 dismissal or summary judgment regarding the challenged grant requirements in both
13 the Gang Suppression program and the Byrne JAG Program for FY 2018, other than
14 those Byrne JAG requirements that were similar to the FY 2017 requirements on
15 which the Court ruled in *Los Angeles v. Whitaker*, No. 2:17-cv-07215-R-JC (C.D.
16 Cal.). Dkt. No. 49. The plaintiff sought summary judgment regarding all of the
17 immigration-related requirements in the Byrne JAG Program for FY 2018, but
18 plaintiff's motion did not apply to the Gang Suppression requirements. Dkt. No. 41.
19 Thus, although plaintiff opposed defendants' dispositive motion, including in relation
20 to the Gang Suppression requirements, the City has not previously sought judgment
21 regarding those requirements.

22 Accordingly, the parties submit that the injunction regarding the Gang
23 Suppression requirements for FY 2018 should be vacated, without prejudice to
24 reinstatement after further motion practice in this Court.

25 **II. The Court Should Enter an Indicative Ruling to Permit a Limited** 26 **Remand.**

27 Rule 62.1 of the Federal Rules of Civil Procedure “allows a party to ask the
28 district court for an ‘indicative ruling’ on an issue the court is without jurisdiction to

1 decide because of a pending appeal.” *Mendia v. Garcia*, 874 F.3d 1118, 1121 (9th
 2 Cir. 2017); *see* Fed. R. Civ. P. 62.1(a). If the district court states that it would grant
 3 the relief sought – or that the request raises a “substantial issue” – the court of
 4 appeals may, under Rule 12.1 of the Federal Rules of Appellate Procedure, remand
 5 some or all of the case for further proceedings while retaining jurisdiction over the
 6 appeal. Fed. R. App. P. 12.1(b); *see Mendia*, 874 F.3d at 1121 (“FRAP 12.1 permits
 7 us to remand a case to the district court, while retaining jurisdiction, for the limited
 8 purpose of allowing the district court to take action consistent with an earlier
 9 indicative ruling.”).

10 Given that this action is now on appeal, while this Court can stay its injunction
 11 pursuant to Rule 62(c), it lacks jurisdiction to vacate a portion of its injunction during
 12 the appeal. An indicative ruling under Rule 62.1 is needed to indicate to the Court of
 13 Appeals how the Court would rule on a motion to vacate the portion of its existing
 14 injunction regarding the Gang Suppression requirements for FY 2018. If this Court
 15 states that it would grant such a motion, the parties intend to seek a limited remand of
 16 this case from the Court of Appeals to allow this Court to effectuate the vacatur as to
 17 the Gang Suppression aspect of the Court’s injunction. The parties could then
 18 engage in further motion practice regarding those requirements in this Court.
 19 Meanwhile, the appeal regarding the Byrne JAG requirements can proceed.

20 CONCLUSION

21 Accordingly, the parties respectfully ask the Court to enter an indicative
 22 ruling stating that it would grant a motion to vacate its existing injunction solely as
 23 to the Gang Suppression requirements, without prejudice to reinstatement after
 24 further motion practice regarding those requirements.

25 Dated: April 5, 2019

26 Respectfully submitted,

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7 ATTESTATION OF SIGNATURES

8 I, W. Scott Simpson, hereby attest, pursuant to Local Civil Rule 5-4.3.4(a)(2)
9 of the Central District of California, that all signatories identified on this document
10 concur in the document's content and have authorized its filing.

11 /s/ W. Scott Simpson

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